

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BREATHABLEBABY, LLC,
a Minnesota company,

Plaintiff,

v.

CROWN CRAFTS, INC.,
a Delaware corporation; CROWN CRAFTS
INFANT PRODUCTS, INC., a Delaware
corporation,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

By its attorneys, Plaintiff BreathableBaby, LLC (“BreathableBaby”) brings this Complaint against Defendants Crown Crafts, Inc. (“Crown Crafts”) and Crown Crafts Infant Products, Inc. (“Crown Crafts Infant Products”) (collectively “Defendants”) as follows:

GENERAL ALLEGATIONS

1. BreathableBaby is an innovator and pioneer in the field of air permeable infant sleep products.
2. BreathableBaby’s air permeable infant sleep technology mitigates dangers to infants and small children associated with using certain less air permeable products in sleeping cribs, including less air permeable soft crib “bumpers.”
3. Pediatricians and child-safety advocates have recommended against using soft, lower permeability crib bumpers due to the risk of infants and babies suffocating if they become

pressed up against the less air permeable material for a prolonged period. In September 2007, the American Journal of Pediatrics published a study officially recommending against using soft crib bumpers due to infant and baby safety concerns.

4. In response to these safety concerns, BreathableBaby undertook to develop safer, higher permeable infant sleep technology.

5. BreathableBaby's products include crib products that provide the benefits of a bumper—for example, protecting infants and young children from injuries that might result when an infant or small child gets an arm or leg trapped between the slats of a crib—but which are made from a greater air permeable material that does not present the dangers of suffocation or sudden infant death associated with lower air permeable sleep products.

6. BreathableBaby has received recognition for its infant sleep products, including multiple Mom's Best awards and the 2008 Seal of Approval from the National Parenting Center. Child Safety House Calls, a pediatrician-founded organization that promotes only pediatrician-approved products, evaluated BreathableBaby's crib bumper and gave the product its Award of Excellence for 2009.

7. On January 6, 2011, Crown Crafts approached BreathableBaby about the possibility of acquiring BreathableBaby, including its valuable assets such as BreathableBaby's proprietary air permeable technology for infant sleep products and the patents related to that technology.

8. On January 7, 2011, the parties held a telephone conference to discuss a potential acquisition.

9. Ultimately, the parties decided against entering into any such transaction.

10. On September 20, 2011, within months of failing to acquire BreathableBaby, Crown Crafts Infant Products announced in a press release that “it will unveil a new, innovative crib liner at the ninth annual ABC Kids Expo to be held in Louisville, Kentucky, on September 23-26, 2011.” The press release also states that benefits of Crown Crafts Infant Products’ “new crib liner” include:

- “Protects infants’ arms and legs from getting caught between the slates of the crib.”
- “Mesh design helps keep sleeping areas cool and comfortable.”
- “Patent pending (utility).”

11. On information and belief, Crown Crafts Infant Products participated in the Ninth Annual ABC Kids Expo in Louisville, Kentucky, on or about September 23-26, 2011. At this event, Crown Crafts had a booth displaying a mesh crib bumper and liner.

12. On information and belief, Crown Crafts has contacted at least one overseas manufacturer to make its mesh crib bumper and liner.

13. On information and belief, Crown Crafts has imported at least one sample of its mesh crib bumper and liner into the United States.

14. On information and belief, Crown Crafts is a sponsor of the internet website and blog ProjectNursery.com.

15. On information and belief, Crown Crafts directs the publishers of ProjectNursery.com to write and publish articles and blog posts featuring Crown Crafts products.

16. On October 4, 2011, an internet blog post featuring Crown Crafts’ mesh crib bumper and liner appeared on ProjectNursery.com. The blog post, which can be found at

<http://projectnursery.com/2011/10/abc-kids-expo-2012-louisville-edition-part-5/>, includes a photograph of Crown Crafts' new product and describes it as a "mesh crib bumper." The blog post also states: "We'll be dishing more on the blog about the future of the bumper later because we know it's on the minds of parents across the country."

17. NoJo is a brand of Crown Crafts Infant Products.

18. On information and belief, Crown Crafts Infant Products owns and operates a Facebook account under the NoJo name.

19. On October 5, 2011, Crown Crafts published an internet post on the NoJo Facebook page, which can be found at www.facebook.com/NoJoBedding. The post states: "Get a sneak peek of new NoJo collections in this post from our friends at Project Nursery." The post contains a hyperlink to the ProjectNursery.com blog post describing the new Crown Crafts mesh crib bumper and liner.

PARTIES

20. BreathableBaby is a limited liability company organized under the laws of the State of Minnesota with a principal place of business at 1593 Wexford Circle, Eagan, MN 55122-2569.

21. On information and belief, Crown Crafts is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 916 S. Burnside Avenue, Gonzales, Louisiana 70737.

22. On information and belief, Crown Crafts Infant Products is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business at 711 W. Walnut Street, Compton, California 90220.

23. On information and belief, Crown Crafts Infant Products is a wholly owned subsidiary of Crown Crafts.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because it arises under the patent laws of the United States, Title 35 of the United States Code, including 35 U.S.C. §§ 271 *et seq.*

25. Consistent with the Constitution of the United States, this Court may exercise personal jurisdiction over Defendants.

26. On information and belief, each Defendant has contacts with this forum, including infringing activities within this judicial District and the State of Minnesota, regularly conducting business within this district and state, and/or targeting this district and state through sales and marketing efforts for their products.

27. Each Defendant does business throughout the United States, including in this judicial District.

28. Under the Minnesota Long Arm Statute, Minn. Stat. § 543.19, each Defendant transacts business in Minnesota and/or has committed acts of patent infringement within and/or outside Minnesota that have caused injury in Minnesota.

29. For each Defendant, its contacts with the State of Minnesota reveal an intention to invoke or benefit from the protection of the state's laws and that each Defendant has purposely availed itself of the privilege of conducting activities within this state.

30. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) at least because, on information and belief, each Defendant is subject to personal jurisdiction in this District, or has committed acts of patent infringement in this District.

COUNT I
INFRINGEMENT OF U.S. PATENT 7,055,192

31. BreathableBaby repeats the allegations of Paragraphs 1-30 as if fully set forth herein.

32. On June 6, 2006, United States Patent Number 7,055,192 (“the ‘192 Patent”) entitled “Crib Shield System and Other Breathable Apparatus” was duly and lawfully issued by the United States Patent and Trademark Office.

33. On the face of the ‘192 patent, BreathableBaby is named as the assignee. A true and correct copy of the ‘192 Patent is attached hereto as Exhibit A.

34. BreathableBaby is the owner of the ‘192 Patent and has the right to enforce that patent against Defendants.

35. BreathableBaby marked its products with the patent number of the ‘192 Patent.

36. Defendants make, use, offer to sell, or sell mesh crib bumpers and liners in the United States that infringe one or more claims of the ‘192 Patent (“infringing products”).

37. On information and belief, Defendants also import the infringing products into the United States.

38. Defendants have been and now are directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the ‘192 Patent in this District and elsewhere by making or having made, using, offering for sale, selling, and/or importing products that infringe one or more claims of the ‘192 Patent, including, at least, crib bumpers and liners, in violation of 35 U.S.C. §271(a).

39. On information and belief, Defendants will continue to infringe the '192 Patent unless and until enjoined by this Court.

40. Defendants' acts of infringement have damaged BreathableBaby in an amount to be proven at trial, but in no event less than a reasonable royalty.

41. Defendants' infringement of BreathableBaby's rights under the '192 Patent will continue to damage BreathableBaby, causing irreparable harm for which there is no adequate remedy at law, unless and until enjoined by this Court.

42. This case presents exceptional circumstances within the meaning of 35 U.S.C. § 285, entitling BreathableBaby to an award of its reasonable attorneys' fees from Defendants.

COUNT II
WILLFUL INFRINGEMENT OF U.S. PATENT 7,055,192

43. BreathableBaby repeats the allegations of Paragraphs 1-42 as if fully set forth herein.

44. Defendants were aware of the '192 Patent before the filing of this complaint.

45. Each Defendant's conduct in infringing the '192 Patent shows objective recklessness.

46. Defendants' infringement of the '192 Patent is willful, entitling BreathableBaby to increased damages under 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, BreathableBaby respectfully requests this Court:

- A. To enter judgment that Defendants have infringed the '192 Patent;
- B. To enter an order permanently enjoining the aforesaid acts of infringement by Defendants, and their officers, directors, agents, servants, employees, assigns, successors, divisions, branches, subsidiaries, parents, and all persons in active concert or participation with

any of them who receive notice of the injunction, from infringing the '192 Patent, including without limitation, from continuing to make, use, sell, offer for sale and import mesh crib bumpers and liners;

C. To award BreathableBaby its actual damages in an amount sufficient to compensate BreathableBaby for Defendants' infringement of the '192 Patent, together with costs of suit and pre-judgment and post judgment interest;

D. An accounting of all damages sustained by Breathable Baby as a result of the acts of infringement by Defendants, including a determination of Defendants' profits resulting from Defendants' acts complained of herein;

E. To declare this case to be exceptional under 35 U.S.C. § 285 and to award BreathableBaby its attorneys fees, expenses, and costs incurred in this action;

F. To treble or otherwise increase the damages awarded to BreathableBaby by reason of Defendants' willful infringement of the '192 Patent;

G. To award BreathableBaby such other and further relief, in law or in equity, as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, BreathableBaby respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: January 11, 2012

By: s/Erik G. Swenson

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